



Cost, Price, and Finance FAR Cases of Interest

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OVERVIEW

- ▶ FAR Rules
 - **Cases to be discussed**
 - *Cases to be covered in time allows*



Reimbursement of Relocation Costs on a Lump-Sum Basis

- ▶ FAR 2003-002, Final Rule published 09/30/05
 - Permits contractors the option of being reimbursed on a lump-sum basis for three types of employee relocation costs
 - Costs of finding a new home
 - Costs of travel to the new location
 - Costs of temporary lodging
 - Allowed only when adequately supported by data on the individual elements of costs that makes up the lump-sum amount
 - When lump-sum is used, any adjustments to reflect actual costs are unallowable.



Buy-Back of Assets

- ▶ FAR Case 2004-014, Final rule published on 6/28/2006
 - Addresses the allowability of depreciation costs of reacquired assets involved in a sale and leaseback agreement. See FAR 31.205-11
 - Allowable depreciation of reacquired property shall be based on net book value of the asset as of the date the contractor originally became a lessee of the property in a sale and leaseback arrangement
 - Adjusted for any allowable gain or loss per 31.205-16(b); and
 - Less any amount of depreciation expense included in the calculation of the amount that would have been allowed had the contractor retained title.
 - Applies only to assets which generated either depreciation expense or cost of money during the most recent accounting period prior to the date of reacquisition.



Submission of Cost or Pricing Data on Noncommercial Modifications to Commercial Items

- ▶ FAR 2004-035, Final rule published on 06/28/06
 - Implements Section 818 of Public Law 108-375, the Ronald W. Reagan National Defense Authorization Act for FY 2005
 - TINA Commercial Item Exception does not apply to minor, noncommercial modifications of a commercial item
 - With an expected cost, in the aggregate, more than \$500K or 5% of the total price of the contract (which ever is greater).
 - Applies to all acquisitions funded by DoD, NASA, and Coast Guard



Cost Accounting Standards (CAS) Administration

- ▶ FAR 1999-025, Final Rule published on 3/9/2005
- ▶ Revised FAR 30 and related clauses
 - Describes process for determining and resolving the cost impact on contract and subcontracts when a contractor makes a compliant change to a cost accounting practice or follows a noncompliant practice.
 - Determination of materiality can be made at anytime during the process
 - CFAO can negotiate cost impact using either a GDM or DCI proposal
 - Revised the process for submitting and reviewing cost impacts
 - Outlined the methods used by CFAO for resolving cost impacts
- ▶ A number of comments/questions have been received on this case and are being addressed on FAR Case 2005-027, FAR Part 30, CAS Administration.
 - Proposed Rule currently out for public comment. Period closes on 12/4/06. 71 FR 58336
- ▶ Another CAS related proposed rule is currently out for public comment
 - 2006-004, see 71 FR 58338, comment period closes 12/4/06



Accounting for Unallowable Costs

- ▶ FAR 2004-006, Final Rule published 09/30/05
 - Makes statistical sampling an acceptable practice for contractors to follow in accounting for and presenting unallowable costs when
 - Statistical sampling results in an unbiased sample that is a reasonable representation of the sampling universe
 - Any large dollar value or high risk transaction is separately reviewed and excluded from the sampling process
 - The statistical sampling permits audit verification
 - Includes the applicability of penalties for failure to exclude certain projected unallowable costs.
- ▶ Statistical sampling was already acceptable under CAS, but had not yet been incorporated into the FAR.



Applicability of Cost Principles

- ▶ FAR Case 2001-018, Final rule published on 12/20/2004
- ▶ Increases the threshold at FAR 42.709(b) and 42.709-6 to \$550K for contracts subject to penalties if a contractor includes expressly unallowable costs in a claim for reimbursement.
- ▶ Note that a later case, 2004-033, increased this threshold to \$650K



Deferred Compensation and Postretirement Benefits Other Than Pensions

- ▶ FAR Case 2001-031, Final rule published on 6/8/2005
- ▶ Revises FAR 31.205-6(k) & (o) & 52.215-18
 - Changes to (k)
 - Deleted language duplicative of definitions in 31.001
 - Eliminates obsolete coverage
 - Uses terminology that is consistent with CAS
 - Change to (o)
 - Moving and revising language from (o)(3) - (5) to (o)(2)(iii) because these requirements apply only to accrual costing other than terminal funding.
 - Changes to 52.215-18, Reversion or Adjustment of Plans for PRB Other Than Pensions
 - New coverage added specifying method of recovery of refunds and credits.



Gains and Losses

- ▶ FAR Case 2004-005, Final rule published on 6/28/2005
- ▶ Amends FAR 31.205-16, Gains and Losses on disposition or impairment of depreciable property or other capital assets.
 - Recognize the gain or loss on sale and leaseback transactions to be consistent with the date at which a contractor begins to incur an obligation for lease or rental costs.
 - Recognize that an adjustment to the lease/rental cost limitations are required to ensure that the total costs associated with the use of the subject assets do not exceed the constructive costs of ownership.



Payment Withholding

- ▶ FAR Case 2004-003, Final rule published on 7/27/2005
- ▶ Removes the mandatory requirement that a contracting officer withhold 5% of payments due under T&M and Labor Hour contracts, unless it is necessary to withhold payment to protect the government's interest or otherwise prescribed in the contract schedule.
- ▶ Also requires the use of a contract modification to withhold payment and allows for the withhold to be made by the contractor prior to submission of their invoice instead of having the government adjust the invoice before payment.



Training and Education Cost Principle

- ▶ FAR 2001-021, Final rule published on 09/30/05
 - Streamlines the Training and Education cost principle at 31.205-44 and increases clarity by
 - Eliminating the disparate treatment of full-time and part-time undergraduate education costs
 - Limits allowable costs to training and education related to the field in which the employee is working or may reasonably be expected to work
 - Makes job-related training and education costs allowable except for six expressly unallowable cost exceptions which are listed in 31.205-44



Fast Payment Procedures

- ▶ FAR Case 2004-031, Final rule published on 4/19/2006
- ▶ Permits, but does not require, fast payment when invoices and/or outer shipping containers are not marked “Fast Pay”
 - Contract must contain the “Fast Payment Procedure” clause, 52.213-1
 - DoD: DFAS will no longer reject invoices but will pay using either fast payment or normal payment procedures
 - Rest of Federal Govt: Each agency will decide how to process.
- ▶ Also deleted the requirement for marking invoices “No Receiving Report Prepared.”



Inflation Adjustment of Acquisition-Related Thresholds

- ▶ FAR case 2004-033, Final rule published on 9/28/06
- ▶ Implements Sec 807, Ronald W. Reagan National Defense Authorization Act for FY05 (Pub. L. 108-375)
 - Also includes increases to thresholds not associated with this statute
- ▶ Truth in Negotiations threshold (FAR 15.403-4) raised from \$550K to \$650K
- ▶ Cost Accounting Standard (CAS) threshold also raises to \$650K
 - All other CAS thresholds are addressed by the CASB and are not impacted by this change.
- ▶ This case was worked by the FAR Law Team and is being covered, in detail, in the FAR Law session